

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

BYRON DAVIS,

Plaintiff,

v.

MATT BARBER, ET AL.,

Defendants.

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CIVIL ACTION NO. 5:17-cv-00146-RWS-CMC

ORDER

Byron Davis, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. § 1983 complaining of alleged violations of his constitutional rights. This Court referred the case to the United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Plaintiff was ordered to pay an initial partial filing fee of \$7.00, in accordance with 28 U.S.C. § 1915(b). He did not comply, instead submitting a financial data sheet showing he had received deposits of \$80.00, \$40.00, and two deposits of \$50.00 in the preceding six months.

The Magistrate Judge reviewed Plaintiff's amended complaint and the other records in the case. Upon such review, the Magistrate Judge issued a Report recommending the lawsuit be dismissed for failure to state a claim upon which relief may be granted as well as for failure to prosecute or to obey an order of the Court. The Magistrate Judge also recommended the statute of limitations be suspended for 90 days after the date of entry of final judgment.

Plaintiff received a copy of the Magistrate Judge's Report but filed no objections thereto; accordingly, he is not entitled to *de novo* review by the District Judge of those findings, conclusions and recommendations, and except upon grounds of plain error, he is barred from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. 28 U.S.C. § 636(b)(1)(C); *Douglass v. United Servs. Auto. Assoc.*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc).

Nonetheless, the Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge and agrees with the Report of the Magistrate Judge. See *United States v. Raddatz*, 447 U.S. 667, 683 (1980) (“[T]he statute permits the district court to give to the magistrate’s proposed findings of fact and recommendations ‘such weight as [their] merit commands and the sound discretion of the judge warrants,’”) (quoting *Mathews v. Weber*, 23 U.S. 261, 275 (1976)). It is accordingly

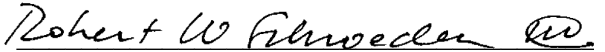
ORDERED the Report of the Magistrate Judge (Docket No. 15) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED the above-styled civil action is **DISMISSED WITHOUT PREJUDICE** for failure to state a claim upon which relief may be granted and failure to prosecute or to obey an order of the Court. It is further

ORDERED the statute of limitations is **SUSPENDED** for a period of 90 days following the date of entry of final judgment. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby **DENIED**.

So ORDERED and SIGNED this 18th day of September, 2019.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE